

OCT 23 2000

BEFORE THE
Federal Communications Commission
 WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)

)
 Joint Applications of OnePoint Communications)
 Corp. and Verizon Communications for Authority)
 Pursuant to Section 214 of the Communications)
 Act of 1934, as Amended, To Transfer Control of)
 Authorizations To Provide Domestic Interstate)
 and International Telecommunications Services)
 as a Non-Dominant Carrier)

CC Docket No. 00-170

DA 00-2155

COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

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COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

The Association for Local Telecommunications Services (“ALTS”) hereby submits its comments in the above-captioned proceeding.¹ There can be nothing more anticompetitive than the historic incumbent monopolist effectively precluding its competitors from serving prospective customers in certain locations through the acquisition of exclusive contracts which may have that effect. ALTS is submitting these comments for the sole purpose of raising the potential impairment to the development of local competition that could result if the transfer of control is approved without certain appropriate conditions, as set forth below.

OnePoint Communications Corp. (“OnePoint”) is a provider of resold telecommunications services, video services, and high-speed Internet access to residential multi-tenant buildings. Verizon Communications (“Verizon”) is the incumbent local exchange carrier

¹ Joint Applications of OnePoint Communications Corp. and Verizon Communications for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, To Transfer Control of Authorizations To Provide Domestic Interstate and International Telecommunications Services as a Non-Dominant Carrier, CC Docket No. 00-170, *Public Notice*, DA 00-2155 (rel. Sept. 22, 2000)(“Public Notice”).

serving many of the regions targeted by OnePoint. There is evidence to suggest that OnePoint enters into contracts with owners of residential multi-tenant buildings that grant OnePoint exclusive marketing rights to the building.² Verizon stands to inherit these rights through its acquisition of OnePoint and it is unclear to what extent these arrangements may provide Verizon with *de facto* exclusivity to serve these residential multi-tenant buildings.

The Commission recently recognized that exclusive access agreements can harm competition and the exercise of consumer preference.³ Consequently, it imposed a prospective ban on such agreements in commercial multi-tenant environments.⁴ In doing so, the Commission indicated it is seeking comment in a Further Notice Of Proposed Rulemaking on “whether it should proscribe carriers from entering into contracts that grant them preferences

² See, e.g., Ian Olgeirson, “OnePoint About to Join Fray,” Denver Business Journal (week of Jan. 12, 1998)(“OnePoint signs agreements with property owners, giving the company exclusive marketing rights to the concentrated residential complexes . . . Malick [the legislative director of the Colorado Public Interest Research Group] does worry that OnePoint could limit choices because of its exclusive marketing agreements with apartment complexes . . .”)(available on the Internet at www.bizjournals.com/denver/stories/1998/01/12/story5.html); see also Lois Mentrup, “A Tale of One City,” Upstart, a Telephony Magazine Supplement (Nov. 29, 1999)(available on the Internet at www.internettelephony.com).

³ This has been specifically recognized by various state commissions as well. See, e.g., Massachusetts Department of Telecommunications and Energy, Order Establishing Complaint and Enforcement Procedures to Ensure that Telecommunications Carriers and Cable System Operators Have Non-Discriminatory Access to Utility Poles, Ducts, Conduits, and Rights of Way and to Enhance Consumer Access to Telecommunications Services, Order Promulgating Final Regulations, D.T.E. 98-36-A (Jul. 24, 2000); CONN. GEN. STAT. ANN. § 16-2471 (West 1999); TEX. UTIL. CODE ANN. § 54.259 (Vernon 1999).

⁴ See “FCC Acts to Foster Telecommunications Competition and Consumer Choice in Multiple Tenant Environments,” WT Docket No. 99-217, CC Docket Nos. 96-98 and 88-57, *News Release* (rel. Oct. 12, 2000).

other than exclusive access, such as exclusive marketing...”⁵ To the extent exclusive marketing agreements have the potential to operate effectively as exclusive access agreements, depending upon their terms and administration, the Commission continues to inquire as to the public interest harms and benefits of exclusive access agreements in residential multi-tenant environments. The sensitivities to the potential harms ought to be greater if the historic monopolist provider is acquiring such agreements. Permitting the incumbent local exchange carrier (“ILEC”) to enjoy exclusive marketing privileges, that can translate to *de facto* exclusive access, in any multi-tenant buildings is likely to be severely harmful to the development of competitive local telecommunications markets.

Although there is reason for optimism in the long term, competition with ILECs has been relatively slow to develop. Much of the delay is attributable to ILEC practices. The Commission is aware of the many controversies surrounding the ILECs’ failures to adhere to the requirements of the Telecommunications Act of 1996 and of the Sherman Act. Against the backdrop of ILEC resistance to competition, any set of arrangements which serve to give an ILEC, in this case Verizon, any measure of “exclusivity” should be considered objectionable insofar as they increase the difficulty for consumers to choose their carrier of choice or for competition to develop *vis-à-vis* the ILEC. Verizon should be required to nullify these exclusive marketing arrangements in those regions in which it is the incumbent local exchange carrier as a condition of the Commission’s approval of the Application.

Exclusive access agreements seriously threaten the efficient operation of competitive markets in both commercial *and* residential buildings. The ALTS members look forward to the opportunity to comment further on this certainty in the context of the Commission’s *Competitive*

⁵ Id.

Networks Further Notice of Proposed Rulemaking. The ILECs' employment of any type of "exclusive" practice in any environment which gives it advantages over its competitors surely cannot be countenanced.

The Telecommunications Act of 1996 is replete with congressional determinations that ILEC dominance of local markets places the incumbent in a materially different position than its new entrant counterparts. Section 251(c) contains a host of requirements applicable solely to incumbent local exchange carriers.⁶ Similarly, incumbent local exchange carriers are not entitled to the reasonable and nondiscriminatory access that utilities must provide to other telecommunications carriers under Section 224 (f)(1).⁷ Taken together, these provisions reveal a congressional intent to prohibit ILECs from maintaining market power that is a function of history rather than underlying efficiency. In the case of multi-tenant buildings, permitting Verizon to purchase exclusivity of any type in connection with its provision of telecom services in its regions of incumbency would run counter to the essential nature and intent of the Telecommunications Act of 1996.

The Commission's recent prohibition on exclusive access arrangements in commercial buildings operates prospectively. Firms are now on notice of the possibility that the Commission ultimately may conclude that a similar prohibition is warranted in residential environments. This creates an incentive to enter into exclusive arrangements for residential environments prior to a Commission ruling on the matter. Where there is a transfer of control involving the transfer of *de jure* or *de facto* exclusive agreements from a competitive carrier to an incumbent, the exclusive agreements should not be permitted to retain their grandfathered status for commercial

⁶ 47 U.S.C. § 251(c)

⁷ 47 U.S.C. § 224(a)(5); see also 47 U.S.C. § 224(f)(1).

environments, nor should they be allowed to remain in effect after the transfer of control for residential environments. As the Commission noted in implementing a similar transfer of control trigger in the application of the newspaper-broadcast cross-ownership context, “[n]o divestiture would be effected nor hardship created since this is a voluntary action by the seller. Thus the rule will apply to all applications for assignment or transfer other than those to heirs or legatees or those for *pro-forma* changes in ownership.”⁸ Consequently, as a condition of Commission approval of the Application, Verizon should be required to cancel the exclusive marketing arrangements it would otherwise inherit from OnePoint in those regions in which it is the incumbent local exchange carrier.

The Commission must remain aware of marketplace developments, such as those occurring in multi-tenant buildings, that harm efficient local telecommunications competition. The Commission also must be prepared to eliminate practices that present a substantial danger of impairing consumers’ primary right to exercise their preferences. In the context of the instant Application, the transfer to Verizon of OnePoint’s exclusive marketing contracts with building owners which, when held by OnePoint as a competitive carrier, may have little to no impact on competition, could have a detrimental effect on the development of residential telecommunications competition if held by Verizon. Given this danger to the public interest, the Commission should proscribe the transfer of such agreements in Verizon’s incumbent regions.

⁸ Amendment of Sections 73.34, 73.240, and 73.636 of the Commission’s Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations, Docket No. 18110, *Second Report and Order*, 50 FCC 2d 1046 at ¶ 103 (1975).

For the foregoing reasons, the Commission should condition its approval of the Application upon Verizon's cancellation of exclusive marketing provisions in the agreements it will obtain through its acquisition of OnePoint for those areas in which Verizon is the incumbent local exchange carrier.

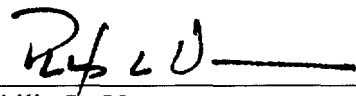
Respectfully submitted,

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Dated: October 23, 2000

CERTIFICATE OF SERVICE

I, Rosalyn Bethke, do hereby certify that on this 23rd day of October, 2000, copies of the attached document were delivered by hand delivery on the following parties:

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